IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25025 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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ALIMUDDIN MAINUDDIN SOLAPURI (SHAIKH) - Petitioner(s)

Versus

COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 12/01/2006

ORAL JUDGMENT

1.Alimuddin Mainuddin Solapuri (Shaikh), petitioner-detenu has filed this habeas corpus petition under

Article 226 of the Constitution of India for direction for quashing and setting aside the order of detention dated 2/10/2005 passed by the Police Commissioner, Ahmedabad and further be pleased to direct the respondents to release the petitioner-detenu from the detention forthwith. Petition was filed on 21/12/2005. This Court has issued Rule on 29/12/2005 which was returnable on 10/1/2006. On behalf of respondent, Mr.L.R.Pujari, learned APP appears so, with consent of parties, matter has been placed for final hearing to this Court.

2. Ms.Banna Dutta, learned advocate appears on behalf of the petitioner. She has invited my attention to the detention order dated 2/10/2005 passed by the detaining authority under the provisions of PASA Act. She has also invited my attention to the order of committal dated 2/10/2005 by which the petitioner has been sent to Bhavnagar Jail. The learned Advocate has also invited my attention to the grounds supplied by the authority to the petitioner also on 2/10/2005. From the grounds of detention, it revels that petitioner has committed seven offences which are as under:

1. Petitioner-detenu has committed offence under jurisdiction of Kagdapith Police Station in connection with Criminal Case No.54 of 2005 dated 28/2/2005. Offence was committed under Section 379 of the IPC which provides punishment for theft. It was alleged that petitioner has committed theft of one auto rickshaw valued at Rs.10,000/-.

2. Petitioner-detenu has committed offence under jurisdiction of Kagdapith Police Station in connection with Criminal Case No.57 of 2005 dated 2/3/2005. Offence was committed under Section 379 411 and 114 of the IPC. It was alleged that petitioner has committed theft of one auto rickshaw valued at Rs.10,000/-.

3. Petitioner-detenu has committed offence under jurisdiction of Kagdapith Police Station in connection with Criminal Case No.66 of 2005 dated 5/3/2005. Offence was committed under Section 379 of the IPC which provides punishment for theft. It was alleged that petitioner has committed theft of one scooter valued at Rs.4,000/-.

4. Petitioner-detenu has committed offence under

jurisdiction of Kagdapith Police Station in connection with Criminal Case No.108 of 2005 dated 5/4/2005. Offence was committed under Section 379 of the IPC which provides punishment for theft. It was alleged that petitioner has committed theft of one auto rickshaw valued at Rs.17,000/-.

5. Petitioner-detenu has committed offence under jurisdiction of Kagdapith Police Station in connection with Criminal Case No.113 of 2005 dated 8/4/2005. Offence was committed under Section 379, 411 and 114 of the IPC. It was alleged that petitioner has committed theft of one auto rickshaw valued at Rs.17,000/-.

6. Petitioner-detenu has committed offence under jurisdiction of Kagdapith Police Station in connection with Criminal Case No.202 of 2005 dated 22/6/2005. Offence was committed under Section 379 and 114 of the IPC. It was alleged that petitioner has committed theft of one auto rickshaw valued at Rs.20,000/-.

7. Petitioner-detenu has committed offence under jurisdiction of Kagdapith Police Station in connection with Criminal Case No.295 of 2005 dated 17/9/2005.

Offence was committed under Section 379 of the IPC which provides punishment for theft. It was alleged that petitioner has committed theft of one auto rickshaw valued at Rs.5,000/-.

3. It was further alleged that petitioner is carrying anti social activities of theft and as kept dangerous weapons with him and therefore he has been defined as 'dangerous person' under the provisions of PASA Act and therefore, the authority has passed detention order and detained the petitioner detenu under the provisions of the PASA Act. The authority has also recorded statement of witness in support of the same under Section 9(2) of the PASA Act.

4. On behalf of the petitioner, the learned advocate for the petitioner stated that even though there are seven offences, all activities amount to case of theft and even causing damage to some of the vehicles. Even all the seven incidents are taken together, there may be breach of law and order situation and therefore, the authority could not pass the order of detention in accordance with provisions of PASA Act. Therefore, subjective satisfaction arrived at by the authority on

the basis of some grounds is not valid and proper. For the same, the learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000 and judgment of the Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816.

5. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has relied upon the order passed by the authority in this behalf. Though he has not filed affidavit, he has stated that if the petitioner-detenu committed seven offence, he has habitually committed the offences. Therefore the order of detention passed by the authority is legal and valid.

6. I have considered relevant materials in this behalf. In this case, there is no link between the offence committed by the petitioner-detenu towards the breach of the PASA Act. The authority has failed to exercise

the jurisdictional powers. There may be only breach of law and order but not public order. In that connection, the learned advocate for the petitioner-detenu has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000 and judgment of the Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816.

7. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana and another division bench judgment of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in

the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

8. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A.

No.554 of 2000, judgment of the Division Bench of this Court in the case of Ashokbhai Jivrajbhai (supra) and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

9.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

10.In the result, petition is allowed. I hereby quash

and set aside the order of detention. Alimddin Mainuddin Solapuri (Shaikh), detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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